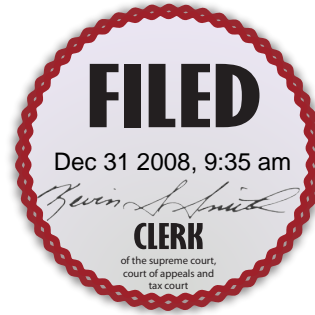


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CORY MAYBERRY,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0803-CR-298

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila A. Carlisle, Judge
Cause No. 49G03-0712-FC-276975

December 31, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MAY, Judge

Cory Mayberry pled guilty to operating a motor vehicle after his license was forfeited for life, a Class C felony.¹ The judge sentenced him to four years at the Indiana Department of Correction, one year of which was to be served on home detention. Mayberry argues his sentence is inappropriate in light of his character and the nature of his offense.

We affirm.

FACTS AND PROCEDURAL HISTORY

On December 26, 2007, Mayberry was pulled over on Interstate 70 in Marion County for traveling seventy-seven miles per hour in a fifty-five mile per hour speed zone. He told the officer he was speeding because he was trying to get his girlfriend to work on time, and he admitted he did not have a valid driver's license and was an habitual traffic violator. Mayberry was arrested for operating a vehicle while an habitual traffic violator.

The next day, Mayberry was charged with operating a motor vehicle after his license was forfeited for life. Mayberry pled guilty to the charge. The plea agreement provided there would be a four-year cap on any executed portion of the sentence and the parties could argue placement.² At the sentencing hearing, several of Mayberry's friends and family testified about his character. The court sentenced Mayberry to four years at the Department of Correction, with one of those years to be served on home detention.

¹ Ind. Code § 9-30-10-17.

² The advisory sentence for a Class C felony is four years. Ind. Code § 35-50-2-6.

The court ordered additional sentencing conditions, including weekly urine tests, full-time employment, and a substance-abuse evaluation.

DISCUSSION AND DECISION

Mayberry argues his sentence is inappropriate because his character is consistent with someone who should be permitted to serve an executed sentence on home detention. We disagree.

We may revise a sentence authorized by statute if it is “inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B). We give deference to the trial court, recognizing its special expertise in making sentencing decisions. *Barber v. State*, 863 N.E.2d 1199, 1208 (Ind. Ct. App. 2007), *trans. denied* 878 N.E.2d 208 (Ind. 2007). The defendant bears the burden of persuading us the sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

Mayberry refers to several character witnesses who testified he had made noticeable improvements in his life and was committed to caring for his children. He argues the appropriate sentence would therefore be home detention.

At the sentencing hearing, the judge recognized as a mitigating circumstance the improvements Mayberry had made in his family life. However, the judge also considered Mayberry’s criminal history, which included several drug and gun-related offenses. Mayberry had previous convictions of operating a vehicle while suspended as an habitual offender, an offense similar to that at issue in this case. The judge found Mayberry had previously been given the minimum sentence for the same offense. The judge considered

Mayberry's criminal history an aggravating factor. The judge determined, in balancing these factors, that an appropriate executed sentence would be four years of incarceration with one of the years on home detention.

Mayberry's character does not indicate the imposition of an executed sentence of four years with one year on home detention was inappropriate.

We affirm.

NAJAM, J., and ROBB, J., concur.